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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Changes to the Board of)
Directors of the National Exchange)
Carrier Association, Inc.)

CC Docket No. 97-21

REPLY COMMENTS OF WORLDCOM

WorldCom, Inc. ("WorldCom") hereby files its reply comments in response to initial comments filed by other parties concerning the Notice of Inquiry ("Notice") released by the Commission on January 10, 1997 in the above-captioned proceeding. Review of the initial comments shows the need for dramatic changes to remove the structural bias inherent in NECA's present governance and membership in order for NECA to even be considered a neutral, third party candidate to administer the new universal service fund ("USF") program.

I. INTRODUCTION AND SUMMARY

WorldCom explained in its initial comments that NECA's revised proposal in its January 10 letter to the Commission (NECA's second such proposal in only three months) does not satisfy the Federal-State Joint Board's four-part test for consideration as permanent USF administrator. The Joint Board recommended that the permanent administrator must: (1) be neutral and impartial; (2) not advocate specific positions to the Commission in unrelated proceedings; (3) not be associated with any particular industry segment; and (4) not have a direct financial interest in the FCC's support mechanisms.¹ WorldCom showed that NECA's proposed

¹ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 96J-3, released November 8, 1996, at para. 830.

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new USAC affiliate would be completely owned by NECA, would include significant NECA representation on its Board of Directors, would use NECA personnel, support services, and resources, and would share other support services, such as human resources and information systems. Even after selection as permanent administrator, the supposedly divested USAC affiliate would continue to share support services with NECA, and would receive transfers of NECA personnel, support services, and resources. All in all, WorldCom concluded, the proposed USAC would fail the Joint Board's four-part test.²

Eight parties filed comments in response to the Commission's Notice. As WorldCom explains briefly below, none of the commenters supporting NECA's revised proposal provide a concrete demonstration why the USAC structure satisfies the Joint Board's four prongs of neutrality, non-advocacy, non-affiliation, and non-pecuniary interest.

III. NECA SHOULD ONLY BE ALLOWED TO SUBMIT A COMPETITIVE BID BASED ON SIGNIFICANT GOVERNANCE AND STRUCTURAL CHANGES

WorldCom indicated in its initial comments that the Commission should not commit scarce time and resources to undertake specific changes to its rules in order to attempt to make NECA an acceptable USF administrator.³ MCI and Ameritech agree with WorldCom that such rule changes would give the appearance of special treatment for NECA. MCI fears that such FCC action "would inappropriately signal implicit support for NECA" and so "bias

² WorldCom Comments at 4-5.

³ WorldCom Comments at 5 n.15.

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the competitive bidding process," while Ameritech argues that "it may create the appearance that NECA has thereby achieved some special status in the selection decision even though the Commission has said otherwise."⁴ Indeed, any FCC actions perceived to be taken on behalf of NECA could discourage other interested entities from bidding for the USF administrator position.⁵

At the same time, WorldCom opposes Ameritech's contrary suggestion that the Commission simply "repeal all rules which constrain NECA's structure and let NECA decide how it should structure itself in the new, post-TA96 environment."⁶ Those rules currently govern all of NECA's regulated activities, including administration of the TRS Fund, Lifeline, and the access tariff pool. Given NECA's apparent unwillingness to even consider changes to its current governance and structure for these non-universal service functions,⁷ FCC oversight of NECA's activities is more critical than ever. So long as NECA administers these programs, the Commission must have rules in place to govern NECA's activities.

⁴ Ameritech Comments at 4.

⁵ WorldCom wholeheartedly agrees with Ameritech that the Commission should require NECA to compete for the position of administrator of the common line and traffic-sensitive tariff pools, and the telecommunications relay service ("TRS") fund. Ameritech Comments at 5. Further, WorldCom believes that any changes to NECA's structure and governance that are adopted in an attempt to meet the Joint Board's criteria for USF administrator are equally well suited to those other positions as well, and should be deemed minimal requirements.

⁶ Ameritech Comments at 4.

⁷ NECA Comments at 6; see also BellSouth Comments at 2.

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Rather than drafting and implementing specific rules, or repealing all rules altogether, to assist NECA in its quest to become USF administrator, the Commission should consider a third approach that puts the onus of change squarely on NECA. In its initial comments, WorldCom proposed that NECA be required to undertake dramatic structural changes, including: (1) creating a completely balanced Board of Directors with a minority of ILEC representation (no more than three members) and significant non-ILEC interests, such as IXC's, CLEC's, and other affected parties;⁸ (2) devising full voting membership for all interested parties, including IXC's and CLEC's, and separate membership categories, with each category possessing voting power commensurate with its Board representation; and (3) agreeing in writing, under penalty of sanctions, to comply fully with the neutrality principles articulated by the Joint Board.⁹ Without these types of fundamental structural changes, WorldCom showed that NECA's current structure cannot satisfy the Joint Board's four-part criteria for an administrator that includes "significant, meaningful representation" of non-ILEC interests.¹⁰

WorldCom proposes that, prior to submitting its bid for the USF administrator position, NECA should agree to adopt the types of far-reaching, comprehensive changes

⁸ WorldCom notes an acceptable alternative suggested by Southwestern Bell. NECA would adopt a "ceiling" on the proportion of industry segments represented on the Board, so that no particular industry would receive more than a specified percentage of the total voting interests. Southwestern Bell Comments at 2. WorldCom suggests that 20 percent would be a reasonable ceiling for each industry segment.

⁹ WorldCom Comments at 6-7.

¹⁰ Recommended Decision at para. 833.

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suggested by WorldCom, and show documented evidence that it has made substantial progress to actually implement such changes. Should NECA refuse to make these suggested changes, or should the Commission determine that NECA's attempts to comply with the proposed changes are not sufficient, the Commission should refuse any further consideration of NECA's bid. This proposal would place the burden of compliance with the Joint Board decision where it belongs: on NECA. It also would avoid the appearance of any official imprimatur by the Commission because binding rule changes could be adopted by the Commission after NECA agrees to these changes. Further, NECA would be prevented from taking the likely third or fourth bite at the proverbial apple as it makes additional attempts to meet the Joint Board's minimum criteria.

If NECA is fully confident that its January 10 letter is sufficient to meet the Joint Board's criteria, it should be required to proceed to base its USF bid on that letter. As was discussed in WorldCom's initial comments, however, NECA's January 10 letter does not provide a credible basis for NECA to become permanent administrator of USF. In the next section, WorldCom will respond briefly to a few points raised by other commenters concerning NECA's inability to meet the Joint Board's criteria.

III. THE COMMENTS DEMONSTRATE WHY NECA'S USAC PROPOSAL IS COMPLETELY INADEQUATE TO MEET THE JOINT BOARD'S FOUR-PRONGED TEST FOR CONSIDERATION AS UNIVERSAL SERVICE FUND ADMINISTRATOR

WorldCom agrees with many of MCI's cogent observations about the nature of NECA, and how regulatory reforms alone likely will be insufficient to render NECA a neutral

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third party. MCI certainly is correct that "as an agent of the ILECs, NECA has an inherent conflict which prevents it from being a neutral administrator of the universal service fund to which ILECs will contribute and from which they will receive funds."¹¹ In contrast, the ILECs supporting NECA, and NECA itself, fail to present compelling evidence how NECA's proposed USAC structure meets any one of the four prongs of the Joint Board's proposed test.

A. USAC Will Not Be Neutral And Impartial, And Will Remain Affiliated With The ILEC Industry

WorldCom showed in its initial comments how NECA's proposed USAC will not be neutral and impartial because it will be owned by NECA (at least initially), include NECA Board members, and use and/or share NECA personnel and support services. MCI agrees with WorldCom that USAC's retention of members from NECA's Board would import numerous conflicts of interest into the new entity.¹² Even NECA, after claiming that USAC will have a "balanced, representative board,"¹³ admits that the Board will include current NECA members "to assure operational continuity."¹⁴

WorldCom shares Ameritech's skepticism that a USF administrator can ever be

¹¹ MCI Comments at 5.

¹² MCI Comments at 6.

¹³ NECA Comments at 4.

¹⁴ NECA Comments at 7 n.11.

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truly neutral "if it includes representatives of the industry or beneficiaries of the fund...."¹⁵

In the context of NECA's flawed proposal, however, the best plan that can be suggested in response is a complete balance of industry interests, rather than complete removal of all industry interests. Without such balance -- which NECA's proposal does not contain -- USAC cannot begin to be viewed as neutral and impartial.

As MCI points out, the same reasons that USAC will not be neutral and impartial, such as the retention of NECA members on the USAC Board, also demonstrate why USAC would violate the Joint Board's third prong of non-association with a particular industry segment.¹⁶ WorldCom agrees. Importantly, no commenter supporting NECA, including NECA itself, makes any credible showing how the January 10 proposal meets either the first or third prong of the Joint Board's test.

B. USAC Cannot Divorce Itself From NECA's Advocacy Role

Bell Atlantic and NYNEX claim that the divestiture of USAC from NECA will allow the latter to continue its historic advocacy role, while permitting USAC to take on purely administrative functions.¹⁷ NECA makes the same point, stating that it wants to continue its current role of acting as an agent for member incumbent LECs, including preparing and

¹⁵ Ameritech Comments at 3.

¹⁶ MCI Comments at 6.

¹⁷ Bell Atlantic/NYNEX Comments at 3-4.

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"defending" access charge tariffs and "participation in Commission and court proceedings...."¹⁸

However, nothing in NECA's proposal creates anything like a "Chinese wall" that would expressly separate these two distinct functions between NECA and USAC. If information and/or employees are able to move back and forth freely between the two entities, as NECA proposes, non-ILEC interests would be seriously compromised. The ILECs' arguments also fail to confront the lack of true separation that would exist between the two organizations. NECA's defense of its tariff filings, and its public advocacy in FCC proceedings, would taint the activities of USAC as well, while USAC's administrative role in turn would have an impact on NECA's various advocacy positions. In short, NECA has not demonstrated that USAC will meet the second prong of the Joint Board's test.

C. USAC Will Have A Pecuniary Interest In The USF

MCI observes that, if NECA's affiliate becomes USF administrator and NECA remains administrator of common access tariffs, NECA will have the ability and incentive to ensure continuation of the ILECs' combined revenues from access tariffs and universal service, and could overcharge captive ratepayers to subsidize the USAC.¹⁹ While this scenario certainly would be possible, WorldCom believes that the Commission need only conclude that NECA's indirect role as USF administrator is fundamentally incompatible with the ILECs' direct financial

¹⁸ NECA Comments at 8.

¹⁹ MCI Comments at 5-6.

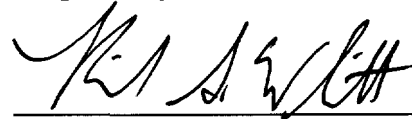
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stake in universal service funding. The ILECs comprising NECA and its USAC affiliate would have a direct interest in how the USF funds are collected and distributed, and could exert significant influence over how USAC performs its functions in order to achieve results favorable to the ILECs. Thus, USAC fails the Joint Board's fourth prong as well.

IV. CONCLUSION

The Commission should find that NECA's January 10 proposal does not meet the Joint Board's proposed criteria. Further, the Commission should adopt the specific proposals recommended above, and in WorldCom's initial comments in this proceeding.

Respectfully submitted,



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